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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1934

No. 54

E. FORREST MITCHELL, Insurance Commissioner of the State of California,
Petitioner,

vs.

BERTHA E. MAURER and INTERNATIONAL RE-INSURANCE CORPORATION (a corporation).

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONER.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONER.

This case comes before the Court on writ of certiorari limited to the question of the validity of the appointment by the District Court of the United States for the Southern District of California of ancillary receivers of International Re-Insurance Corporation upon the petition of primary receivers of that corporation appointed by the Court of Chancery of the State of Delaware in and for the County of New Castle.

OPINION BELOW.

The writ was so granted to the United States Circuit Court of Appeals for the Ninth Circuit, and the opinion of that Court is reported in 69 Fed. (2d) 233, and is printed on pages 55-79 of the record.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, 28 U. S. C. A. Sec. 347.

STATEMENT OF THE CASE.

International Re-Insurance Corporation was organized under the laws of Delaware and, prior to April 19, 1933, was authorized to do and doing the business of insurance in California. (R. 1.)

On March 23, 1933, Bertha E. Maurer of New Jersey, having a judgment recovered in that State against a policyholder of Commonwealth Casualty Company of Pennsylvania which theretofore had merged with Independence Indemnity Company of Pennsylvania which, in turn, had theretofore merged with International Re-Insurance Corporation, filed in the Court of Chancery of Delaware in and for the County of New Castle, a bill for the appointment of a receiver of International Re-Insurance Corporation. (R. 13.)

On March 30, 1933, the Insurance Commissioner of California suspended the right of International Re-

Insurance Corporation to transact the business of workmen's compensation insurance in California. That suspension was in effect at all times thereafter. (R. 28, 56.)

International Re-Insurance Corporation defaulted in the Delaware receivership proceeding, and on April 19, 1933, the Delaware Court made its order appointing Arthur G. Logan of Delaware, Carl M. Hansen of Pennsylvania and George deB. Keim of New Jersey as receivers of that company. (R. 19.)

At 4:45 P. M. on April 19, 1933, there was filed in the District Court of the United States in and for the Southern District of California a "Petition for Appointment of Ancillary Receiver" of International Re-Insurance Corporation captioned "Bertha E. Maurer, complainant, v. International Re-Insurance Corporation, a corporation, respondent". (R. 56.)

That petition alleged that the petitioners had been appointed as receivers by the Delaware Court on April 19, 1933; that they had qualified as such receivers; that International Re-Insurance Corporation was a Delaware company transacting the business of insurance in various places, including California, with an office in the City of Los Angeles; that on April 19, 1933, a bill of complaint was filed in the Court of Chancery in and for New Castle County, Delaware, against that company for the purpose of having a receiver appointed; that the nature of the Delaware action was more particularly referred to in the exemplified copy of the bill of complaint in that action which was being forwarded and would be presented to the District Court when received; that petitioners

had been appointed primary receivers simultaneously with the filing of said bill of complaint in Delaware; that the company owned real and personal property in the City of Los Angeles; that petitioners were informed and believed that certain creditors of the company were threatening suits against that property and that attachments were about to be issued or might issue; that there were considerable outstanding and past due obligations of the company; that the petitioners and creditors of the company would sustain irreparable damage if such suits were filed and if attachments issued therein; that in the opinion of the petitioners the property of the company in the City of Los Angeles was worth, in excess of secured and unsecured debts, about two million dollars; that petitioners believed it was necessary for the preservation of that property and for the protection of creditors interested therein that ancillary receivers be appointed by the District Court; and that a certified copy of the order of the Delaware Court appointing petitioners as primary receivers, a certification as to the due approval of their bond as primary receivers, and a certified copy of the answer interposed by the company to the bill of complaint filed in Delaware were being forwarded and would be presented to the District Court when received.

The petition prayed for an order appointing ancillary receivers of all property of the company within the jurisdiction of the District Court to preserve that property until the further order of that Court, for an order directing all persons, including creditors of the company, to deliver all property of the company into

the possession of the ancillary receivers, and for an order enjoining all persons from interfering with that possession.

The petition was verified on April 18, 1933, on information and belief, by one of the attorneys for the petitioners. (R. 56.)

That petition was granted by the District Court without notice or hearing and without any appearance by the company in an order dated April 19, 1933, but filed April 20, 1933, appointing George deB. Keim, one of the primary receivers, and W. H. Comstock as ancillary receivers.

The order of the District Court recited that "upon the bill of complaint" filed in the Delaware action, "upon the certified copy of the order" appointing the primary receivers, "upon the original order appointing such receivers", filed in the Delaware Court, "upon the certificate of the Clerk of said court" of the filing and approval of the bond of the primary receivers, and upon the petition of the primary receivers for the appointment of an ancillary receiver, the two ancillary receivers were appointed "with all rights and powers to carry into force and effect the order of the original court of jurisdiction". The order appointing the ancillary receivers also included the direction for the delivery of possession and the injunction against interference with the possession of the ancillary receivers prayed for in the petition. (R. 4, 5.)

At 4:54 P. M. on April 19, 1933, E. Forrest Mitchell, as Insurance Commissioner of California, acting pur-

suant to the duties devolving upon him by the California Liquidation Act affecting insurance companies,

Act 3739 *Deering's General Laws of California,*
Statutes of Calif. for 1919, p. 265,
Statutes of Calif. for 1921, p. 1017,
Statutes of Calif. for 1931, p. 2375,

which was before this Court in *Mitchell v. Lay,* 48 F. (2d) 79, and which is partly quoted in the opinion of the United States Circuit Court of Appeals in this case, filed a proceeding against International Re-Insurance Corporation in the Superior Court of the State of California in and for the County of Los Angeles alleging that the company was insolvent, and had property and creditors in California, and praying that he be named in his official capacity as ancillary receiver or statutory liquidator to liquidate and wind up the business and affairs of the company in California. (R. 56.)

Upon the filing of the proceeding in the State Court, that Court issued its order temporarily restraining the company from transacting business and from disposing of its property and ordering the Insurance Commissioner into the actual possession of the company's property. That order included an order to show cause which was served upon the company during the morning of April 20, 1933. (R. 56, 57.)

The order of the District Court was served on the company during the afternoon of April 20, 1933, and was served on the State Insurance Commissioner during the morning of April 21, 1933. (R. 57.)

On April 25, 1933, the petitioning primary receivers filed with the District Court various amend-

ments to their "petition for the appointment of ancillary receiver" characterized as a bill of complaint, which included exemplified copies of the documents in the Delaware action referred to in the original petition for the appointment of ancillary receiver and there said to be en route for the purpose of filing in the District Court. (R. 5.)

On April 25, 1933, International Re-Insurance Corporation filed in the District Court its answer to the "bill of complaint" of the petitioning primary receivers, admitting all of the allegations of that petition, affirmatively asking the District Court to appoint an ancillary receiver or receivers to take possession of the company's property in that jurisdiction, and explaining that the filing of that consent answer had been authorized by resolution of the Executive Committee of the Board of Directors of the company adopted on April 18, 1933, the day before the primary receivers were appointed. (R. 24.)

On May 2, 1933, the State Insurance Commissioner filed in the District Court a motion to vacate the order appointing the ancillary receivers, alleging that the Court had no jurisdiction to make the appointment, that the petition was wanting in equity and did not justify the appointment of ancillary receivers, and that the order of appointment was not a valid order. The motion was denied. A motion was thereupon filed for a rehearing of the motion to vacate and, though entertained, was also denied. (R. 25, 31, 44.) Appeal to the United States Circuit Court of Appeals was then taken from the orders upon those motions. (R. 45-47.)

The United States Circuit Court of Appeals upheld the orders of the District Court on the motions to vacate and denied a petition for rehearing. Application was then made to this Court for certiorari. (R. 55, 80.)

SPECIFICATION OF ERRORS.

It is claimed by petitioner herein:

1. That the Appellate Court erred in deciding that the District Court had jurisdiction to appoint ancillary receivers upon the petition of the primary receivers.

2. That the Appellate Court should have decided that the petition of the primary receivers for the appointment of ancillary receivers was lacking in essential jurisdictional averments and that it was insufficient to confer jurisdiction upon the District Court to appoint ancillary receivers.

3. That the Appellate Court erred in deciding that the District Court first acquired jurisdiction through the filing of the petition of the primary receivers for the appointment of ancillary receivers.

4. That the Appellate Court erred in not deciding that said petition for the appointment of ancillary receivers was a legal nullity and that therefore the California State Court first acquired jurisdiction by the proceeding therein filed by the State of California, through its Insurance Commissioner, on April 19, 1933.

ARGUMENT.

I.

A FEDERAL COURT OF A FOREIGN JURISDICTION DOES NOT HAVE JURISDICTION TO APPOINT ANCILLARY RECEIVERS ON THE PETITION OF THE PRIMARY RECEIVERS.

(a) The decision of the Appellate Court in this case.

The Appellate Court pointed out that under the general rule announced by this Court in *Booth v. Clark,* 58 U. S. 338, a receiver in equity has no right to sue in Courts of a foreign jurisdiction. Evidently in building toward its subsequent statement that the purpose of the requested appointment of ancillary receivers was not to remove property from California, the Appellate Court observed that the rule of *Booth v. Clark* is confined to a case where the purpose of the primary receiver is to remove property from a foreign jurisdiction, citing *Great Western Mining Co. v. Harris,* 198 U. S. 561, and *Sterrett v. Second National Bank,* 248 U. S. 73.

A reading of those cases to us seems to compel the conclusion that the rule of *Booth v. Clark* rests upon many considerations—that an ordinary chancery receiver, having only the authority arising from his appointment as such, has no legal status extraterritorially; that the Court appointing him has no extraterritorial jurisdiction; that the foreign jurisdiction has the right and power to determine for itself whether an ancillary receiver shall be appointed and who the ancillary receiver shall be; and that there shall be such disposition of property in the foreign jurisdiction as will protect and not prejudice creditors interested therein.

The *Great Western Mining* case but follows and applies the principle enunciated in *Booth v. Clark.* The *Sterrett* case does likewise but establishes, as do *Oakes v. Lake,* 290 U. S. 59, and *Clark v. Williard,* 78 L. Ed. 743, an exception to that rule when the primary receiver is vested by conveyance or statute with the status of title-holder, quasi-assignee, successor to the insolvent corporation, or charter liquidator. In the *Sterrett* decision it is said that the rule of *Booth v. Clark* "permits an application for an ancillary receivership" in a foreign jurisdiction, but it is not said that the primary receiver may so apply. It does not say what status he must have and disclose if he may apply, and no comment is made as to the Court in which the application may be made or as to the averments necessary to the application.

"Specific recognition" for the Appellate Court view is said by that Court to exist in *Ward v. Foulkrod,* 264 Fed. 627. The subject of that case was an insolvent Delaware corporation for which two main receivers had been appointed, one by a State Court in Delaware and the other by a Federal District Court in Pennsylvania. The State Court proceeding was first filed and under the rule of this Court laid down in *Harkin v. Brundage,* 276 U. S. 36, the State Court first acquired jurisdiction to liquidate the affairs of the company. The State Court receiver filed a petition in the Pennsylvania Federal Court to summarily oust the Federal receiver. The petition was denied without prejudice, the Court saying that the State Court receiver could "institute appropriate proceedings for the appointment of ancillary receivers", for

the property of the company in the hands of the Federal receiver in Pennsylvania. That was not a declaration that the Federal Court in Pennsylvania through the filing therein of a mere request by the Delaware receiver for the appointment of ancillary receivers in Pennsylvania would have had jurisdiction to make the requested appointment. No mention was there made, and the Appellate Court decision in this case is likewise silent upon the point, of the fact that Section 3884 of the Revised Statutes of Delaware invests a receiver of a Delaware corporation appointed by a Delaware State Court with title to personal property of the corporation wherever situated.

Such was the status of the Delaware receiver in the *Ward* case but an equally important circumstance, absent from this case, was the existence of two main, independent, antagonistic receivership proceedings involving an actual controversy and presenting an impossible situation from an administrative viewpoint. Obviously it was necessary, through appropriate proceedings, that the hand of the Federal receiver be stayed, otherwise the rule of first acquired jurisdiction would be meaningless and its purpose defeated. But the Appellate Court in this case was not concerned with any such situation.

The conclusion of the Appellate Court as to jurisdiction is also grounded upon the cases of *Rust v. United Water Works Co.*, 70 Fed. 129, and *Seested v. Bonfils*, 33 Fed. (2d) 185.

In the *Rust* case a receiver of American Water Works Company appointed by a State Court in New

Jersey intervened in a proceeding pending against that company in the Federal Court in Colorado seeking leave to vacate a judgment there improperly obtained against that company and to interpose defenses against the judgment creditor. The receiver, under the New Jersey law, had the status of charter successor and trustee for the creditors and stockholders of the judgment debtor. More than that, the receiver's petition to intervene and to be appointed ancillary receiver disclosed an actual, pending controversy in which the receiver was an aggrieved party, and was accompanied by exemplified copies of the New Jersey Court proceedings which were presented to the Colorado Court and which were before the latter when the latter's jurisdiction was invoked and exercised.

It is not clear from the opinion in the *Seested* case whether the primary receiver, appointed by a State Court in Missouri, was directly petitioning the Federal Court in Colorado for the appointment of an ancillary receiver or whether the application was made by a creditor. Counsel for petitioner in *McCandless v. Furlaud,* under submission in this Court, interpret the opinion as dealing with an application by the primary receiver, but counsel for respondents therein contend with equal conviction that creditors were the petitioners in the Colorado Court. The statement of facts in the opinion, and the title of the case, indicate that the petitioners for the appointment of the ancillary receiver were Frank C. Seested and Florence Gaskins, both judgment creditors, although the reasoning of the Court appears to have been upon the

assumption that the request for the appointment of the ancillary receiver was made by the primary receiver. In any event, there is no independent reasoning and the decision on the point is wholly predicated upon the Rust and other cases herein considered.

(b) The claim of jurisdiction made by petitioner in McCandless v. Furland.

From the Appellate Court opinion in that case it appears that McCandless is an ordinary chancery receiver of Duquesne Gas Corporation appointed by a Federal Court in Pennsylvania and that upon his petition for an ancillary receiver, accompanied by the full record of the Pennsylvania proceeding, a Federal Court in New York appointed an ancillary receiver. The petitioner in the *McCandless* case, defending the jurisdiction of the New York Court, cites several cases to which we shall briefly refer.

Coal & Iron Ry. Co. v. Reherd, 204 Fed. 859, presented a case of a primary receiver appointed in Virginia who brought suit as receiver in West Virginia prior to his appointment as ancillary receiver on a petition for the appointment of an ancillary receiver not filed by the primary receiver but by complainants against the corporation in receivership.

Shinney v. North American Savings L. & B. Co., 97 Fed. 9, is a case of the appointment in Minnesota of a primary receiver of a Minnesota corporation against which there was pending in a Federal Court in Utah a suit in which the company appeared after service of process and in which the Minnesota re-

ceiver filed a petition asking that he be appointed ancillary receiver. The opinion does not disclose any contention to the effect that the Utah Court was without jurisdiction to appoint an ancillary receiver at the instance of the primary receiver.

Bluefields S. S. Co. v. Steele, 184 Fed. 584, was concerned with the appointment of an ancillary receiver made by a creditor of the company in receivership.

Walker v. U. S. Lighting & Heating Co., 220 Fed. 393, was also a case where a creditor sought the appointment of an ancillary receiver.

McCandless also relies on *Platt v. Philadelphia & R. R. Co., et al.,* 54 Fed. 569, which seems to hold, qualifiedly, that a Federal Court may appoint an ancillary receiver upon the ex parte application of a foreign chancery receiver. However, it is not entirely clear whether the primary receiver was the applicant. The decision seems to be at most conditional authority for the ex parte appointment of an ancillary receiver based upon a past practice which the Court said it would fully consider upon motion to annul the order appointing the ancillary receiver.

Bernheimer v. Converse, 206 U. S. 516, and *Converse v. Hamilton,* 224 U. S. 243, declare the right of a primary receiver having a status of quasi-assignee to sue in a foreign jurisdiction but they do not bear upon the issue under discussion, nor does *Grant v. Leach & Co.,* 280 U. S. 351.

(c) The reasons for lack of jurisdiction to appoint the ancillary receivers.

Sections 1 and 2 of Article III of the Constitution define the scope of the "judicial power" of the United States. In their relation to this case that power is confined to "controversies" between citizens of two or more states.

Section 24 of the Judicial Code (28 U. S. C. A. Sec. 41), conformably to that limitation, provides that the District Courts shall have original jurisdiction of "suits" where the "matter in controversy" exceeds a prescribed amount and "is between citizens of different states".

The term "controversy" is explained in *Marbury v. Madison,* 1 Cranch 137, cited in *Muskrat v. United States,* 219 U. S. 346,

> "to be a suit instituted according to the regular course of judicial procedure."

In the *Marbury* case it is also said that the term "implies the existence of present or possible adverse parties, whose contentions are submitted to the Court for adjudication". Quoting from the pronouncement of this Court in *Osborn v. Bank of United States,* 9 Wheat. 738, it was further said that the judicial power of the United States "is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law".

It therefore appears essential to the exercise by a District Court of the United States of its carefully prescribed jurisdiction that there be a complainant before that Court asserting rights against an-

other, that there be a suit instituted or pending in that Court, and that there be an actual controversy submitted to that Court. Support for these conclusions is found in:

Mercantile Trust Co. v. Kanawaha & O. Ry. Co., 39 Fed. 337;
In re Brant, 96 Fed. 257;
Sullivan v. Swain, 96 Fed. 259;
Greene v. Star Cash etc. Co., 99 Fed. 656.

The *Mercantile* and *Brant* cases were cited approvingly in *Fairview Floor, Spar & Lead Co. v. Ulrich*, 192 Fed. 894, which, however, involved the application by a creditor for the appointment of an ancillary receiver in the form of a mere petition to which were attached complete copies of the records in the primary receivership proceeding.

The reasoning in the group of cases just cited is that the Federal Court invoked lack of jurisdiction because no independent suit was there pending, because the petitioner was not an aggrieved party, and because there was no controversy between adverse parties. It was said that to uphold the appointment of the ancillary receiver under such circumstances would mean that the jurisdiction of a District Court of the United States could be enlarged otherwise than by congressional action.

The presentation under this head is directed to a mere request or petition to a Federal Court for the appointment of ancillary receivers which does not contain the essentials of a bill of complaint filed by an aggrieved complainant involved in an actual con-

troversy over the subject of the bill. From the authorities discussed it would seem to follow that a Federal Court in a foreign jurisdiction is without power to appoint an ancillary receiver upon the application of a primary receiver unless the latter has an authority and status beyond that of an ordinary chancery receiver which follows him into the foreign jurisdiction, where it is recognized, and unless the application is at least the legal equivalent, regardless of its label, of a bill of complaint in which the applicant is an aggrieved complainant involved in an actual controversy over the subject of the application.

Apart from the status of the primary receiver, the test of the validity of the appointment of an ancillary receiver by a Federal Court in a foreign jurisdiction at the instance of the primary receiver is the power of the Federal Court. Counsel for petitioner in the *McCandless* case stress the principle of comity. But this Court has declared that "comity is not a rule of law but one of practice, convenience and expediency".

Mast Foos & Co. v. Stover Mfg. Co., 177 U. S. 488.

Comity, therefore, cannot endow a primary receiver with authority not granted by the law of the sovereignty in which he has been appointed, and it cannot confer upon a Federal Court jurisdiction with which it is not vested by the Constitution and the Congress. Nor can the consent of an insolvent corporation to the appointment of a primary receiver or to the appointment of an ancillary receiver have

such effect upon the status of the primary receiver or upon the jurisdiction of a Federal Court to appoint the ancillary receiver.

Gatch v. Mobile R. Co., 59 Fed. (2d) 217.

Some of the authorities we have considered mention the full faith and credit clause but this Court has said that Section 1 of Article IV of the Constitution has no greater dignity than other provisions of our organic law. Therefore, it cannot be properly said that by virtue of the full faith and credit clause alone a Federal Court in a foreign jurisdiction has power to appoint an ancillary receiver.

Old Wayne Mutual L. Assn. v. McDonough, 51 L. Ed. 345.

No legal significance attaches to the argument, made in the *McCandless* case, that creditors of an insolvent residing in the foreign jurisdiction could be as well protected by the administration of an ancillary receiver appointed by a Federal Court in that jurisdiction whether appointed upon the petition of a primary receiver or otherwise, for the question still remains one of the power and jurisdiction of the Federal Court. Counsel for petitioner in the *McCandless* case emphasize the interest of the primary receiver in a self-directed or controlled ancillary administration although it is conceded that the rule of procedure and receivership practice is for the ancillary receiver to cooperate and coordinate with the primary receiver to the fullest extent possible under the law and consistent with the rights of creditors in the ancillary jurisdiction. Indeed, the

primary receiver, the defendant corporation and the local creditors are said to have the only direct interest in the appointment of an ancillary receiver, but counsel seems to overlook the fact that in practically every State of the Union there is statutory provision for the appointment of primary and ancillary receivers of insolvent insurance companies at the instance of the State itself, evidencing a well established public policy and purpose to avoid the extravagance and delay so frequently incident to friendly, hurried, *ex parte,* private receiverships upon which this Court has frowned.

Harkin v. Brundage, supra;
Shapiro v. Wilgus, 287 U. S. 348.

The petitioning primary receiver in the *McCandless* case seems to believe that the failure of a creditor in the foreign jurisdiction to there seek by appropriate proceeding the appointment of an ancillary receiver or the inability of the primary receiver to locate a creditor in the foreign jurisdiction who could be spurred into making that application would present a dilemma, although it is the fact that the State of New York, notably, and nearly every other State has official agencies authorized and directed by State law to liquidate and wind up the affairs of insolvent insurers.

In making these observations we do not contend that the administration of the affairs of a defunct insurance carrier must be conducted in State Courts under State auspices to the exclusion of the Federal Courts. We stand on the ground that the issue here

is wholly one of the power and jurisdiction of the Federal Court. If the doors of the Federal Court in New York should not have opened to McCandless in his case or to any primary receiver in any case where there is no party aggrieved involved in an actual controversy suing for the appointment of an ancillary receiver by the Federal Court in a foreign jurisdiction, that would seem to be an argument more properly addressed to the Congress.

II.

THE DISTRICT COURT BELOW DID NOT HAVE JURISDICTION TO APPOINT THE ANCILLARY RECEIVERS.

Whatever the law may be upon the issue which this Court has elected to consider, we submit that the petition for the appointment of an ancillary receiver filed in the District Court below on April 19, 1933, was utterly inadequate as a bill of complaint stating a cause of action, if that is a requisite, or as a sufficient petition, assuming that an ancillary receiver may be appointed through the medium of a proper petition.

Obviously, the so-called "petition" was not a bill of complaint in the true sense and did not initiate a suit by an aggrieved party with respect to an actual controversy. Regarded as a petition or as a bill of complaint it did not advise the District Court of the reason why the primary receivers had been appointed, of the nature of their duties, or of the need for the appointment of an ancillary receiver. The Delaware receivers might have been appointed for a very limited

purpose but whether they were specially or generally appointed could not be ascertained from the document filed with the District Court. The petition frankly stated that the "nature of the cause of action" in Delaware would appear to the District Court upon the examination of the records in the Delaware action, but that explanation and information were not before the District Court when it made the order appointing the ancillary receivers.

The petition asked the District Court to order creditors of the insolvent to surrender to the ancillary receivers property of the insolvent in the possession of those creditors without notice to them or opportunity to be heard upon such claims as they may have had to continued and undisturbed possession. The petition sought an injunction against any and all interference with the anticipated possession of the property of the insolvent by the ancillary receivers without notice to the company, to the State Insurance Commissioner charged by law with the supervision of the affairs of the company in California, to California creditors of the company or to any one else who might be interested. No order to show cause was issued or made returnable on the application for that injunction.

Not even the meager recitals of the petition were definitely represented to the District Court as true, for one of the attorneys for the petitioners, verifying the petition, swore that he believed the recitals to be true. That caution is understandable in view of the fact that the verification occurred on April 18, 1933,

the day before the Delaware Court made its order appointing the primary receivers.

Bluefields S. S. Co. v. Steele, supra, squarely supports our contention that as a petition or as a bill the application for the appointment of an ancillary receiver submitted to the District Court was fatally defective to confer jurisdiction to grant the application.

> "But the court whose aid is invoked must alone determine whether the case is a proper one for the appointment of an ancillary receiver. It cannot act intelligently, and therefore cannot tell what, in comity, it ought to do unless reasonable information has been communicated to it concerning the object which it is requested to aid. It follows that a bill seeking the appointment of an ancillary receiver should disclose the nature of the proceeding in which the receiver was appointed in the court of primary jurisdiction. In the proceeding now before us no affidavits accompanied the bill of complaint except the affidavit of the complainant himself to the effect that he had read the bill, that its contents were true save as to the matters stated on information and belief, and that, as to those matters, he believed them to be true. No copy of the bill of complaint filed in the court of Louisiana, or of the order of that court appointing a receiver there, accompanied the bill filed here.
>
> * * * * * * *
>
> Whether the receiver in Louisiana was appointed because of the insolvency of the Bluefields Company, or for some other reason, we are left to conjecture.
>
> * * * * * * *

> The rule (comity) cannot be properly invoked where the essential jurisdictional averments are absent. In the bill before us there are no such averments as would justify the appointment of an ancillary receiver for the limited purpose mentioned in the order, or for any other purpose. While the judgment and decrees of other courts are entitled to full faith and credit, in this case the Circuit Court had before it no judgment or decree of the Louisiana court. It was given no information whatever as to the nature of the proceedings on which the primary receiver was appointed.
>
> * * * * * * *
>
> The bill is fatally defective in not setting forth facts sufficient to justify the appointment of an ancillary receiver."

The District Court must have realized that it could not act knowingly upon the petition, that it could not tell what, in comity or otherwise, it ought to do, that it had no reasonable information concerning the object which it was requested to aid, and that it could not determine whether the granting of the application would protect or prejudice the California creditors of the company, or whether the purpose of the appointment was to remove property of the company from California.

The limitations imposed upon the filing of suits by primary receivers in foreign jurisdictions and upon the jurisdiction of Federal Courts are designed to permit and make necessary an inquiry into those very matters as to which the District Court in this case had no knowledge or information.

Proof of that realization stands out in the order of the District Court appointing the ancillary receivers in the declaration that the petition was granted upon the records of the Delaware action none of which was at that time before the District Court. That order directed the ancillary receivers to carry into force and effect the order of the Delaware Court although the nature of that order was not known to the District Court. That order commanded all creditors of the company to deliver to the ancillary receivers all property of every kind belonging to the company regardless of their claims thereto and without any prior notice to them. The sweeping injunction prayed for in the petition was likewise granted in that order without notice or hearing to any one affected thereby.

CONCLUSION.

Wherefore, petitioner respectfully submits that the appointment of the ancillary receivers by the District Court was without jurisdiction and void and that the judgment of the United States Circuit Court of Appeals for the Ninth Circuit should be reversed with costs here and in the Court below.

Dated, San Francisco, California,
November 2, 1934.

Respectfully submitted,
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Attorney for Petitioner.